

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

<i>In the Matters of</i>)	
)	
Applications of)	MB Docket No. 14-57
)	
Comcast Corporation, Time Warner)	
Cable Inc., Charter Communications,)	
Inc., and SpinCo to Assign and Transfer)	
Control of FCC Licenses and Other)	
Authorizations)	
)	
For Consent To Transfer Control of)	
Licenses and Authorizations)	
<i>and</i>)	
)	
Applications of)	MB Docket No. 14-90
)	
AT&T, Inc. and)	
DIRECTV)	
)	
For Consent To Assign or Transfer Control)	
of Licenses and Authorizations)	

COMMENTS OF DISH NETWORK CORPORATION

DISH Network Corporation (“DISH”) respectfully opposes any proposal to withhold from the public record any documents that would inform the public interest analysis for the mergers of Comcast Corporation (“Comcast”) and Time Warner Cable, Inc. (“TWC”), and of AT&T, Inc. (“AT&T”) and DIRECTV (together, the “Merger Applicants”). The Public Notice issued in the two above-referenced proceedings indicates that several large programming owners have asked the Commission to withhold entirely, or severely limit access to, certain programming agreements and retransmission consent agreements to which the Merger Applicants are parties.¹ Taking any steps to stifle access to these types of documents would

¹ See FCC Public Notice, *Media Bureau Seeks Comment on Issues Raised by Certain Programmers and Broadcasters Regarding the Production of Certain Documents in Comcast-*

disserve the public interest and prevent interested parties from being able to fully and meaningfully evaluate the Merger Applicants' arguments in favor of the mergers at issue.

In particular, Comcast and TWC have made statements in their September 23 response filing to the effect that the FCC, DOJ, petitioners, and the public need not worry about programming costs. They say that "there can be no question of Comcast dominating the market for buying programming" and that the "programming marketplace is very healthy and expanding."² Comcast's economists have opined that the Comcast/TWC merger "is unlikely to affect the relative bargaining position of Comcast and content companies in any material fashion" because programmers have many distribution options through which to sell their programming.³ Interested parties to this proceeding, including the more than 20 parties who filed Petitions to Deny the Comcast/TWC merger, have the right to challenge these statements and need access to all the relevant documentation that might allow them to do so.

For example, the following parties, among others, have raised concerns about programming costs. The merger review process would be incomplete and one-sided if these parties (or their appropriate outside counsel) were denied the opportunity to review the key documents that would enable them to support their serious concerns about the Comcast/TWC merger:

- Frontier cautioned that smaller MVPDs seeking access to content will be harmed by Comcast's increased size post-transaction, noting that while Comcast/TWC will see scale-based cost savings, "those savings will come at the expense of all smaller competitors and their customers."⁴

Time Warner Cable-Charter and AT&T-DIRECTV Transaction Proceedings, DA 14-1383, MB Docket Nos. 14-57 and 14-90 (Sept. 23, 2014) ("*Public Notice*").

² See *Opposition to Petitions to Deny and Response to Comments*, Comcast Corporation and Time Warner Cable Inc., MB Docket No. 14-57, p. 152 (Sept. 23, 2014).

³ *Id.* at 156.

⁴ *Petition to Deny of Frontier Communications*, MB Docket No. 14-57, pp.7-8 (Aug. 25, 2014).

- CenturyLink argues the merger will give Comcast “unprecedented negotiating power with content providers, which would enable it to obtain per-subscriber rates lower than those charged to other MVPDs, and in particular to smaller competitors like CenturyLink.”⁵
- The American Cable Association argues that Comcast/TWC “will be able to negotiate for even better rates, as programmers will be induced to accept these lower rates to continue to get their programming in front of as many consumers as possible.”⁶
- ITTA argues that Comcast “already has lower programming costs than other large cable operators, so the merger would only serve to enable Comcast to drive down these costs even further. Even Comcast has admitted that ‘[o]ur scale, our programming discounts – you add it all together, a little bit here, a little bit there, it makes a big difference.’”⁷
- NTCA argues that a combined Comcast/TWC will be able to leverage its dominance in the pay-TV market, resulting in “higher prices and fewer choices for consumers.”⁸

All of the arguments above merit consideration, and documents relevant to the analysis can and should be made available under the current protective orders in way that balances the confidentiality needs of the parties to the contracts with those of the parties raising concerns about the mergers.

To the extent that the Commission determines that special handling and viewing rules are warranted with respect to the programming agreements at issue⁹ (which DISH does not believe are necessary), then any such measures should still permit those parties eligible to access highly confidential documents to view and analyze the documents.

⁵ Comments of CenturyLink, Inc., MB Docket No. 14-57, p.13 (Aug. 25, 2014).

⁶ Comments of American Cable Association, MB Docket No. 14-57, pp.24-25 (Aug. 25, 2014).

⁷ Petition to Deny of ITTA, MB Docket No. 14-57, pp. 11-12 (Aug. 25, 2014) (internal citations omitted).

⁸ Petition to Deny of NTCA- The Rural Broadband Association, MB Docket No. 14-57, p. 7 (Aug. 25, 2014).

⁹ See *Public Notice* at 1 (“Are the documents cited by the filers -- programming agreements and retransmission consent agreements -- materials that warrant additional protection beyond that provided pursuant to our existing protective orders in these proceedings?”).

Respectfully submitted,

/s/

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